IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 6087/2007

NATHU LAL RAIGER
Vs.
THE ADDITIONAL CIVIL JUDGE (S.D.), JAIPUR DISTRICT, JAIPUR & ORS.

Date: 14.09.2007

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. R.K. Daga for the petitioners.
Mr. G. Bardhar for the respondents.

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The matter comes up on the application under Article 226(3) of the Constitution of India for seeking vacation of ex parte interim order dated 14.08.2007 granted by this Court.

At the request of both the parties, the matter is finally heard at this stage.

The respondent No.2 Mohari Lal filed an election petition before the District & Sessions Judge, Jaipur District, Jaipur against the petitioner. In the election petition, the respondent No.2 has alleged that a Notification was issued by the Government of Rajasthan for election of Sarpanch and Panch for the year 2005 and the counting was not properly made and corrupt and malpractices are adopted. The Additional

Civil Judge (Sr. Division) No.2, Jaipur District, Jaipur has framed the following issues:-

> "1- क्या प्रार्थी प्रार्थना पत्र में वर्णित आधारों पर ग्राम पंचायत थली, तहसील जमुवारामगढ का दिनांक 4.2.05 को सरपंच पद पर किये गये विपक्षी संख्या-1 के चुनाव को अवैध घोषित कराने का अधिकारी है?
>
> ------प्रार्थी
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> 2- क्या प्रार्थी प्रार्थना पत्र में वर्णित आधारों पर प्रार्थी पुन: मतगणना करवाकर सरपंच घोषित करवाने का अधिकारी है?
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> 3- आया प्रार्थना पत्र में रिटर्निंग आफीसर, जिला निर्वाचन अधिकारी, मुख्य सचिव राजस्थान सरकार, राज्य निर्वाचन आयोग आवश्यक पक्षकार थे, उन्हें पक्षकार बनाऐ बिना उक्त चुनाव याचिका अंसोजन व कुसंयोजन के नुक्स से खारिज होने के कारण पोषनीय नहीं है?
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> 4- क्या चुनाव याचिका मय हर्जा विशेष 5000/- रूपये खारिज किये जाने योग्य है?
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> 5- अनुतोष?"

Vide judgment dated 06.08.2007, the Court below while deciding these issues, ordered for recounting and the said order dated 06.08.2007 has been challenged by the petitioner in this writ petition.

It is alleged that total 2528 votes are casted and only 2527 votes are counted. It is also not disputed by the petitioner and the respondents that only difference of one vote is there and having considered each and every aspect the Court below thought it proper to order for recounting.

I find no illegality in the impugned order dated 06.08.2007 passed by the Additional Civil Judge

(Sr. Division) No.2, Jaipur District, Jaipur as the Court below has considered the judgments referred by the respective parties and after considering each and every aspect, ordered for recounting, which requires no interference by this Court.

Consequently, the writ petition fails and the same is hereby dismissed.

The interim order dated 14.08.2007 granted by this Court stands rejected. The stay application also stands rejected.

The application under Article 226(3) of the Constitution of India stands allowed.

(K.S. RATHORE),J.

/KKC/